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June 14, 2017

**EX PARTE NOTICE VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network, PS Docket No. 16-269; Accelerating Broadband Deployment, GN Docket No. 17-83***

Dear Ms. Dortch:

The First Responder Network Authority (FirstNet) recently submitted a notice of ex parte presentation that once again seeks to erect unnecessary procedural barriers to a state's choice to opt-out from the FirstNet radio access network.<sup>1</sup> While purporting to implement the Spectrum Act,<sup>2</sup> FirstNet offers unduly rigid interpretations of the state opt-out process that neither reflect the statutory text, nor honor Congress's decision to permit states a measure of autonomy on how to support public safety officials in their state. The draft order circulated by Chairman Pai, by contrast, implements the plain language of the statute by not imposing artificial obstacles to a state's effort to invoke its opt-out rights under the law. Southern Communications Services, Inc., d/b/a/ Southern Linc (Southern Linc) therefore encourages the Commission to adopt the draft Order as written.

For its part, FirstNet renews its effort to use the Commission's process for evaluating the interoperability of state opt-out plans as a vehicle to prohibit states or their network partners from employing their own core network elements. FirstNet never addresses the reality that a state or its network partner cannot have visibility into the traffic on its network—and therefore cannot assess and manage capacity, security, and reliability of traffic as the Spectrum Act requires the state to do—unless a state employs its own core. The draft order correctly recognizes that the Commission's role is limited to evaluating the interoperability of a state's radio access network (RAN). The Commission's draft order does not reject an otherwise qualified plan merely because it contains core network elements. The Commission should adopt its proposed approach.

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<sup>1</sup> Letter from Patrick Donovan, Attorney, First Responder Network Authority, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 (filed May 26, 2017) ("FirstNet Ex Parte").

<sup>2</sup> See Title VI, Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156 (codified in scattered sections of 47 U.S.C.) ("Spectrum Act").

## **I. The Commission Should Adopt its Proposed Procedures For Administering the State Opt-Out Process**

FirstNet claims that its proposed procedures for reviewing opt-out plans merely implement the language of the statute.<sup>3</sup> But on virtually every issue, FirstNet proposes needlessly rigid rules or policies that are not compelled by the text of the statute, and indeed are inconsistent with the plain language of the statute. By contrast, the draft order correctly recognizes that any opt-out procedures should respect Congress's decision to authorize state opt-outs and should give states a genuine opportunity to work in partnership with the Commission and FirstNet to demonstrate that their opt-out plans satisfy the statute's interoperability requirement.

The Draft Order, for example, correctly recognizes that the 180-day window to "develop and complete" an RFP could "reasonably be read" to support a number of different requirements.<sup>4</sup> Accordingly, the draft properly provides additional time to give states "flexibility to complete their alternative plans."<sup>5</sup> The Draft Order also properly recognizes that there is no sound reason to require a Governor personally to submit a state's opt-out plan.<sup>6</sup> Such a requirement would serve "no practical purpose,"<sup>7</sup> and the Commission therefore should adopt the draft's proposal to permit a Governor to authorize a designee to submit the opt-out plan.

Substantively, the Draft Order correctly reflects the view that the Commission's role is to ensure interoperability with the FirstNet network rather than delving more broadly into network policies. The statute itself authorizes the Commission to assess interoperability and entrusts to NTIA the task of ensuring such issues as "comparable security, coverage, and quality of service to that of the nationwide public safety broadband network."<sup>8</sup> The draft accordingly recognizes that a state plan submitted to the Commission need only satisfy the interoperability requirements of the statute and address how the state will provide for the "construction, maintenance, operation, and improvements of the state RAN."<sup>9</sup> The draft also properly proposes to limit the Commission's review to compliance with certain portions of the Interoperability Board Report and interoperability of the RAN with the nationwide public safety broadband network.<sup>10</sup> The Commission should adopt the content requirements for state plans set forth in the draft without change.

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<sup>3</sup> See, e.g., FirstNet Ex Parte at 6.

<sup>4</sup> See *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, Report and Order\*, PS Docket No. 16-269, FCC-CIRC1706-02 ¶ 19 ("Draft Order").

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* ¶ 12.

<sup>7</sup> *Id.*

<sup>8</sup> Spectrum Act § 6302(e).

<sup>9</sup> Draft Order ¶¶ 24-25.

<sup>10</sup> *Id.* ¶¶ 52, 58-62.

## II. The Commission Should Not Prohibit States From Employing Their Own Core Network Elements

Southern Linc has previously explained why the Spectrum Act does not prohibit states from using core network elements as part of their opt-out plans.<sup>11</sup> FirstNet argues that Section 6302(e) explicitly references only the RAN and thus establishes that states' plans may not include cores.<sup>12</sup> But the FCC is perfectly capable of reviewing a state's opt-out plan should it include the use of non-FirstNet core network elements. The FCC's Interoperability Board authored a comprehensive report that contemplates several different network architecture scenarios, including network scenarios that use existing core networks.<sup>13</sup> The FCC can meet its statutory requirement by reviewing a state's alternative plan and determining that the state "will be in compliance with the minimum technical interoperability requirement developed under section 6203,"<sup>14</sup> including requirements associated with multiple core network elements.

FirstNet also acknowledges that the Spectrum Act requires states to submit plans for the "construction, maintenance, operation, and improvements" of the RAN, as well as demonstrate "comparable security, coverage, and quality of service to that of the nationwide public safety broadband network."<sup>15</sup> Southern Linc has explained that network operators cannot distinguish between public safety communications and commercial communications over the radio access network without the traffic interacting with some core network elements. Without the functionality provided by the core network, states cannot provide any service, let alone make the showings required by the statute. FirstNet construes the statute in a way that makes a state's opt-out option illusory—an illogical result that Congress could not have intended.

FirstNet's latest filing affirms that states may use their own core networks to serve commercial customers.<sup>16</sup> That approach implies that states will manage commercial traffic on their networks, but hand-off public safety traffic to the NPSBN. FirstNet does not explain how a state network would distinguish between commercial and public safety traffic at the RAN level, because the core network is what provides the intelligence regarding the traffic. Similarly, FirstNet's approach would prevent states from satisfying other portions of the Spectrum Act, such as the statute's express authorization for states to use excess capacity through public-private partnerships.<sup>17</sup>

The Draft Order's silence on core network architectures properly reflects the scope of the Commission's review authority.<sup>18</sup> The Draft Order correctly recognizes that while the statutory opt-

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<sup>11</sup> See *generally* Letter from Trey Hanbury, Southern Communications Services, Inc., d/b/a/ Southern Linc, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269, GN Docket No. 17-83 (filed May 8, 2017).

<sup>12</sup> FirstNet Ex Parte at 3.

<sup>13</sup> See Technical Advisory Board for First Responder Interoperability, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network*: Final Report at 29 (May 22, 2012), <https://ecfsapi.fcc.gov/file/7021919873.pdf> ("Interoperability Board Report").

<sup>14</sup> Spectrum Act § 6302(e)(3)(C)(i)(I).

<sup>15</sup> Spectrum Act § 6302(e).

<sup>16</sup> FirstNet Ex Parte at 5.

<sup>17</sup> Spectrum Act § 6302(g).

<sup>18</sup> Draft Order ¶ 62.

out process is rigorous, “Congress intended to establish a process that affords states a meaningful opportunity to ‘develop and complete requests for proposals,’ as well as to prepare and file the required opt-out plan with the Commission.”<sup>19</sup> The Draft Order strikes the right balance of implementing the statutory procedures while respecting Congress’s choice to allow states to opt-out and giving states a meaningful opportunity to do so. The Commission should adopt the Draft Order as written.

Please contact me with any questions about this submission.

Respectfully submitted,

/s/ Trey Hanbury

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<sup>19</sup> *Id.* ¶ 17.